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ABSTRACT

This information memorandum describes the selected laws, rules, and state-level activities in Wisconsin related to acquired immunodeficiency syndrome (AIDS) and tests for antibodies to the virus (HIV) that causes AIDS. A section on current state laws on AIDS and HIV antibody testing describes laws related to informed consent for testing, requirement for testing, confidentiality of test results, required reporting of positive test results, restrictions on the use of tests for employment purposes, restrictions on the use of tests for insurance purposes, eligibility for the Health Insurance Risk Sharing Plan, and penalties for violating the statutory provisions. A section on the Public Health Task Force on AIDS briefly describes the task force's summary report on AIDS and lists 17 other task force publications and information on how to obtain copies of the reports. The next part of the report discusses sections in 3.53 and 6.67 of the Wisconsin Administrative Code which deal with the underwriting of individual life, accident, and health insurance policies and the issues of HIV antibody testing and sexual orientation. The final section discusses 1987 Wisconsin Act 27 which appropriates funds for purposes related to AIDS and HIV infections. Seven purposes for use of funds are listed and provisions vetoed by the governor are described. (NB)

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SELECTED LAWS, RULES AND STATE-LEVEL ACTIVITIES IN WISCONSIN RELATED TO ACQUIRED IMMUNODEFICIENCY SYNDROME

INFORMATION MEMORANDUM 87-4

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September 17, 1987

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SELECTED LAWS, RULES AND STATE-LEVEL ACTIVITIES IN WISCONSIN RELATED TO ACQUIRED IMMUNODEFICIENCY SYNDROME

This Information Memorandum describes the following selected laws, rules and state-level activities in Wisconsin related to Acquired Immunodeficiency Syndrome (AIDS) and tests for antibodies to the virus that causes AIDS.

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A. CURRENT STATE LAWS ON AIDS AND HIV ANTIBODY TESTING

In recent years, there has been a dramatic increase in the number of cases of AIDS and of infections with Human Immunodeficiency Virus (HIV or HTLV-III), the virus that causes AIDS. As a result, Legislatures across the country have enacted laws relating to those conditions. In Wisconsin, as of September 1, 1987, 209 cases of AIDS have been reported to the Department of Health and Social Services (DHSS). Also, DHSS estimates that for every case of AIDS, there may be approximately 50 cases of HIV infection. Of the 209 persons with AIDS reported to date, 134 had died as of September 1, 1987. In a publication entitled AIDS--The Wisconsin AIDS Program--Prevention Through Education, dated September 1987, DHSS placed the 209 cases into various transmission categories, as follows:

Transmission Category	Number of Cases
Homosexual/bisexual male	166
Intravenous drug abuser	5
Homosexual male and intravenous drug abuser	10
Hemophilia/coagulation disorder	7
Transfusion-associated	8
Heterosexual contact	3
Undetermined	10
Total	209

The remainder of this section of the Information Memorandum describes current Wisconsin laws on AIDS and HIV antibody testing.

1. Informed Consent for Testing {s. 146.025 (2), Stats.}

Current law provides that no health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure. The law requires the health care provider, blood bank, blood center or plasma center that subjects a person to an HIV antibody test to provide the test subject with an informed consent form for testing or disclosure.

The law spells out the types of information that must be contained in an informed consent form. Also, the form must include a statement explaining that the test results may be disclosed as provided under the law and either: (a) a list that identifies the persons to whom, and circumstances under which, the results may be disclosed; or (b) a statement that the list is available upon request.

The prohibition on testing without informed consent does not apply to a health care provider who procures, processes, distributes or uses a human body part donated for purposes of an anatomical gift and who tests for the presence of an antibody to HIV in order to assure medical acceptability of the body part. The prohibition also does not apply to DHSS, a certified laboratory, a health care provider, a blood bank, a blood center or a plasma center, for purposes of research, if the testing is performed in a manner in which the identity of the test subject is not known and may not be retrieved by the researcher.

2. Requirement for Testing {s. 146.023, Stats.}

Current law requires that any blood bank, blood center or plasma center that purchases or receives voluntarily donated whole blood, blood

plasma, a blood product or a blood derivative shall, prior to its distribution or use, subject it to a test approved by the Federal Food and Drug Administration and DHSS for the presence of an antibody to HIV. This requirement does not apply in a medical emergency, including a threat to the preservation of the life of a potential donee, under which whole blood, blood plasma, a blood product or a blood derivative that has been subjected to testing is unavailable.

Current law states that if performance of a validated test (as defined by DHSS) yields a positive result for the presence of an antibody to HIV, the whole blood, blood plasma, blood product or blood derivative may not be distributed or used except for research purposes.

Current law further provides that the requirement for testing and the prohibition on the use of blood that tests positive for an antibody to HIV do not apply "...to the extent that federal law and regulations require that a blood bank, blood center or plasma center test whole blood, blood plasma, a blood product or a blood derivative."

3. Confidentiality of Test Results [s. 146.025 (3) to (6), Stats.]

Under current law, the results of an HIV antibody test may be disclosed only to the following persons or under the following circumstances:

a. To the test subject.

b. To the test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.

c. To an agent or employe of the test subject's health care provider who provides patient care or handles or processes specimens of bodily fluids or tissues.

d. To a blood bank, blood center or plasma center that subjects a person to a test for any of the following purposes: (1) determining the medical acceptability of blood or plasma secured from the test subject; (2) notifying the test subject of the test results; or (3) investigating HIV infections in blood or plasma.

e. To a health care provider who procures, processes, distributes or uses a human body part donated for purposes of an anatomical gift for the purpose of assuring medical acceptability of the body part.

f. To the State Epidemiologist or his or her designee for the purpose of providing epidemiologic surveillance or investigation or control of a communicable disease.

g. To a funeral director or to other persons who prepare a body of a decedent for burial or other disposition.

h. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

i. Under a lawful order of a court of record.

j. To a person who conducts research, for the purposes of the research, if the researcher: (1) is affiliated with the test subject's health care provider; (2) has obtained permission to perform the research from an institutional review board; and (3) provides written assurance to the person disclosing the test results regarding the researcher keeping the test results confidential. A private pay patient is allowed to deny disclosure of his or her test results to a researcher by annually submitting to the person maintaining the test results a signed, written request for denial.

Current law provides that the test subject may authorize disclosure to anyone not listed above. Also, a person receiving the test results may redisclose them only to the persons described above.

4. Required Reporting of Positive Test Results {s. 146.025 (7), Stats.}

Current law requires the State Epidemiologist to determine, based on the preponderance of available scientific evidence, the procedures necessary in Wisconsin to obtain a validated HIV antibody test result. The Secretary of DHSS is required to declare this to be a validated test.

If a validated HIV antibody test yields a positive result, a health care provider, blood bank, blood center or plasma center that maintains a record of the test result must report specified information to the State Epidemiologist. However, the report may not include information regarding the sexual orientation of the test subject or the identity of persons with whom the test subject may have had sexual contact. The provision regarding reporting of positive test results and what may or may not be included in the report does not apply to persons for whom a diagnosis of AIDS (as opposed to a positive test for an antibody to HIV) has been made.

5. Restrictions on the Use of Tests for Employment Purposes [s. 103.15, Stats.]

Current law prohibits an employer or agent of an employer from directly or indirectly:

a. Soliciting or requiring as a condition of employment an HIV antibody test.

b. Affecting the terms, conditions or privileges of employment or terminating the employment of any employe who obtains an HIV antibody test.

Current law prohibits agreements, between an employer or agent of an employer and an employe or prospective employe, offering employment or any pay or benefit in return for taking an HIV antibody test.

The prohibitions described above do not apply if the State Epidemiologist determines, and the Secretary of DHSS declares, that individuals who have HIV infections may, through employment, provide a significant risk of transmitting HIV to other individuals.

6. Restrictions on the Use of Tests for Insurance Purposes [s. 631.90, Stats.]

Under current law, no insurance policy issued or renewed on and after July 20, 1985, shall do any of the following:

> 631.90 (2) ...(a) Require or request directly or indirectly any individual to reveal whether the individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.
>
> (b) Condition the provision of insurance coverage on whether an individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.
>
> (c) Consider in the determination of rates or any other aspect of insurance coverage provided to an individual whether an individual has obtained a test for the presence of an antibody to HTLV-III or what the results of this test, if obtained by the individual, were.

The above prohibitions do not apply to any test or series of tests, for use in the underwriting of individual life, accident and health insurance policies, that: (a) the State Epidemiologist finds "...medically significant and sufficiently reliable" for determining the presence of an antibody to HIV; and (b) the Commissioner of Insurance finds and designates by rule as "...sufficiently reliable for use in the underwriting of individual life, accident and health insurance policies." {These findings have been made and rules promulgated, as described in Part C of this Information Memorandum.} However, this provision does not authorize the use of any tests or series of tests for the presence of an antibody to HIV which would result in discrimination against an individual in violation of s. 628.34 (3), Stats., relating to unfair discrimination among policyholders, without an actuarial basis for the discrimination.

7. Eligibility for the Health Insurance Risk Sharing Plan {s. 619.12 (1) and (3), Stats.}

Current law provides that a person qualifies for the Health Insurance Risk Sharing Plan (HIRSP), if the person has a notice of rejection or cancellation from one health insurer and evidence of a positive test for an antibody to HIV.

The HIRSP is a health insurance plan offered under the auspices of the Office of the Commissioner of Insurance and administered by a governing board appointed by the Commissioner and an insurer selected through a competitive bidding process. A brochure on HIRSP describes it as a health insurance plan for "...persons who are unable to find adequate health insurance coverage in the private market due to their mental or physical condition."

8. Penalties {ss. 103.20 and 146.25 (8) and (9), and ch. 601, Stats.}

Current law provides that a person who violates the statutory provisions dealing with informed consent for testing, confidentiality of HIV antibody test results or required reporting of test results is liable to the test subject "...for actual damages and costs, plus exemplary damages of up to $1,000 for a negligent violation and up to $5,000 for an intentional violation." A plaintiff has the burden of proving, by a preponderance of the evidence, that a violation occurred.

A person who intentionally discloses the results of an HIV antibody test in violation of the confidentiality provisions "...and thereby causes bodily harm or psychological harm..." to the test subject may be fined not more than $10,000, imprisoned not more than nine months, or both.

Violation of the provisions that restrict use of the test for employment purposes is punishable by a fine not to exceed $100.

Although the statutory provisions that restrict use of the test for insurance purposes do not set forth explicit penalties for violation, ch. 601, Stats., sets forth a variety of remedies for violation of insurance statutes or orders of the Commissioner of Insurance (e.g., injunctions, forfeitures, criminal penalties and suspension or revocation of an insurer's authority to do business in Wisconsin).

B. PUBLIC HEALTH TASK FORCE ON AIDS

The Public Health Task Force on AIDS was a 16-member body appointed by the Secretary of DHSS and chaired by Dr. David Kindig, M.D., University of Wisconsin-Madison. The Task Force met 12 times between October 1985 and October 1986. The Task Force published Summary Report: Public Health Task Force on Acquired Immunodeficiency Syndrome (AIDS), which described the activities of the Task Force and summarized the guidelines set forth in the other reports of the Task Force. The Summary Report also included the Task Force's recommendations for changes in laws on AIDS and HIV infections.

In addition to the Summary Report, the Task Force published the following reports:

1. Preventing the Transmission of HTLV-III in the School Setting.

2. Preventing the Transmission of HTLV-III in the Prison Setting.

3. Preventing the Transmission of HTLV-III in the Jail Setting.

4. Preventing the Transmission of HTLV-III in the Hospital Setting.

5. Preventing the Transmission of HTLV-III in the Nursing Home Setting.

6. Preventing the Transmission of HTLV-III in Division of Care and Treatment Facilities' Institutions.

7. Preventing the Transmission of HTLV-III in the Workplace.

8. Preventing the Transmission of HTLV-III During Post-Mortem Examination, Autopsy and Funeral Preparation.

9. Preventing the Transmission of HTLV-III in the Pre-Hospital Emergency Medical Care Setting.

10. Preventing the Transmission of HIV in Dental Practice.

11. Providing Patient Care and Preventing the Transmission of HIV in the Home Setting.

12. Child Care and Pediatric AIDS, HIV Infections and Related Conditions.

13. Preventing the Transmission of HIV Through Serologic Screening.

14. Prevention and Control of HIV-Related Infections Through Counseling and Contact Notification.

15. Care for the Chronically Ill: Services for People with AIDS in Wisconsin.

16. Social, Psychological and Neuropsychiatric Aspects of HIV Infections: Service Delivery System Implications.

17. Information and Recommendations for Prevention of HIV Infections Through Public Health and Professional Education.

Copies of the Task Force reports are available from:

Wisconsin AIDS/HIV Program
Wisconsin Division of Health
1 West Wilson Street, Room 318
P.O. Box 309
Madison, WI 53701-0309
(608) 267-5287

C. SECTIONS INS 3.53 AND 6.67 (4), WISCONSIN ADMINISTRATIVE CODE

As noted in Part A, 6, of this Information Memorandum, current law provides an exemption to the prohibitions on the use of HIV antibody tests for insurance purposes for the underwriting of individual life, accident and health insurance policies if: (1) the State Epidemiologist finds those tests to be "...medically significant and sufficiently reliable" for the presence of an antibody to HIV; and (2) the Commissioner of Insurance finds the tests to be "...sufficiently reliable for use in the underwriting of individual life, accident and health insurance policies."

In July 1986, the State Epidemiologist made a finding that repeatedly reactive enzyme-linked immunosorbent assay (ELISA) tests, followed by a Western blot assay, were medically significant and sufficiently reliable for determining the presence of an antibody to HIV. The Office of the

Commissioner of Insurance (OCI) then promulgated s. Ins 3.53, Wis. Adm. Code, which contained the Commissioner's findings that the series of tests designated by the State Epidemiologist were sufficiently reliable for use in the underwriting of individual life, accident and health insurance.

Section Ins 3.53 (3), Wis. Adm. Code, states that the rule applies to any insurer writing individual life, accident and health insurance coverage in Wisconsin. The rule does not apply to any insurer writing group life, accident and health insurance coverage, including group life, accident and health insurance coverage that is individually underwritten.

Section Ins 3.53 (6), Wis. Adm. Code, states that an insurer may disclose the results of an HIV antibody test only to: (1) the applicant or insured who is tested; (2) the applicant's or insured's health care provider with the consent of the applicant or insured; and (3) such other persons as the applicant or insured authorizes through a consent form.

The rule allows the insurer to disclose the results of a test for the presence of an HIV antibody to the Medical Information Bureau, Inc., but only for a series of tests which result in a positive ELISA test and a reactive Western blot assay and only after receiving the informed consent for disclosure from the applicant or insured who is tested. Also, an insurer is not allowed to require or request any individual to reveal whether the individual has undergone an HIV antibody test at an alternate test site (designated as such by the State Epidemiologist) or the results of such a test.

An insurer which requires an individual to undergo an HIV antibody test must provide the individual with an informed consent for testing or disclosure form in advance. An insurer may not require an applicant or insured to undergo a series of HIV antibody tests unless the cost of the tests is borne by the insurer.

At the time OCI promulgated s. Ins 3.53, Wis. Adm. Code, it also promulgated s. Ins 6.67 (4), Wis. Adm. Code. The latter rule prohibits an insurer from using sexual orientation in the underwriting process or in the determination of insurability, premium, terms of coverage or nonrenewal. Also, no insurer may include an inquiry about the applicant's or insured's sexual orientation in an application for disability or life insurance coverage or directly or indirectly investigate the applicant's or insured's sexual orientation. Finally, the rule prohibits an insurer from using the marital status, occupation, gender, medical history, beneficiary designation, or the zip code or territorial classification of an applicant or insured or any other factor to establish, or aid in establishing, the applicant's or insured's sexual orientation.

D. 1987 WISCONSIN ACT 27

1. Provisions Enacted

1987 Wisconsin Act 27 (the 1987-89 Biennial Budget Act) appropriates $610,300 [of which $318,100 is federal revenue and $292,200 is state general purpose revenue (GPR)] to DHSS in 1987-88 and the same amount in 1988-89 for purposes related to AIDS and HIV infections.* The appropriation is to be used for the following purposes:

a. Partner referral and notification. Act 27 requires DHSS to contact an individual known to have received an HIV infection and encourage him or her to refer for counseling and testing any person with whom the individual has had sexual relations or has shared intravenous equipment.

b. Grants to local projects. Act 27 requires DHSS to make grants to organizations for the provision of AIDS prevention information, the establishment of counseling support groups and the provision of direct care to persons with AIDS.

c. Prevention training for alcohol and drug abuse workers. Act 27 requires DHSS to provide training for persons providing alcohol and other drug abuse services and counseling, to enable those persons to educate drug dependent individuals on the relationship of the use of shared intravenous equipment and AIDS and on the prevention of AIDS.

d. Statewide public education campaign. Act 27 requires DHSS to promote public awareness of the risk of contracting AIDS and measures for AIDS prevention. This is to be done by development and distribution of information through family planning clinics, offices of physicians and clinics for sexually transmitted diseases and by newsletters, public presentations and other releases of information to the media. The information must be targeted to individuals whose behavior puts them at risk of contracting AIDS and will encompass the following topics: (1) AIDS and HIV infections; (2) means of identifying whether or not individuals may be at risk of contracting AIDS; (3) measures individuals may take to protect themselves from contracting AIDS; and (4) locations for procuring additional information or obtaining testing services.

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*Please note that the reference to a total annual allocation of $560,300 in s. 146.022 (2) (intro.), Stats., does not include an additional $50,000 which is included in the ch. 20, Stats., appropriation schedule.

e. Information network. Act 27 requires DHSS to establish a network to provide information to local public health officers and other public officials who are responsible for AIDS prevention and training.

f. HIV seroprevalence studies. Act 27 requires DHSS to perform HIV antibody tests and conduct behavioral surveys among population groups which are determined by DHSS to be highly at risk of contracting AIDS. Information obtained must be used to develop targeted AIDS prevention efforts for those groups and to evaluate the state's prevention strategies. The results of the tests are confidential and may be disclosed only to the test subject or to other persons with the informed consent of the test subject. Other information released may not identify the test subject.

g. Grants for targeted populations and intervention services. Act 27 requires DHSS to make grants to those organizations determined by DHSS to be best able to contact individuals determined to be highly at risk of contracting AIDS for the provision of AIDS information and intervention services.

Act 27 requests the Legislative Council to: (1) study the problem of the epidemic of AIDS in Wisconsin and the response by state government to the detection, treatment and surveillance of AIDS; and (2) report its findings, conclusions and recommendations to the 1989 Legislature when it convenes [SEC. 3037 (17m) of Act 27].

2. Provisions Vetoed

a. The Governor item-vetoed provisions in Enrolled 1987 Senate Bill 100 (the Bill that resulted in Act 27) that would have required DHSS to provide grants to up to four health departments selected by DHSS from among areas in the state with the highest number of individuals who have been diagnosed as having AIDS. The grants would have been for providing funding for follow-up care that included all of the following:

(1) Community-oriented services for persons with AIDS and their families, including the provision of information on housing, alternatives to hospitalization, coordination of services and case management;

(2) Information for education of the public concerning AIDS; and

(3) Training for health care providers who may treat individuals who have received an HIV infection.

In vetoing the above provisions, the Governor directed the Department of Administration (DOA) to place $115,000 GPR in 1987-88 and the same amount in 1988-89 in unallotted reserve to lapse to the general fund.

b. The Governor also item-vetoed a provision in the Enrolled Bill that would have stated that, of the funds appropriated for general program operations for the Division of Health in DHSS, $75,000 GPR may not be expended in each fiscal year for counseling and testing at alternate testing sites, unless DHSS had expended all federal funds available for these services. In vetoing this provision, the Governor directed DOA to place $75,000 GPR in 1987-88 and the same amount in 1988-89 in unallotted reserve to lapse to the general fund.

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